

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	CASE NO.	7:08-CV-061
v.	§	(Lead Case)	
26.774 ACRES OF LAND, MORE OR LESS, SITUATED IN STARR COUNTY, STATE OF TEXAS; AND ANABELL G. GARCIA, ET AL.	§	TRACT NO.	RGV-RGC-1045 RGV-RGC-1046 (Expired Access Easements)
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UNITED STATES OF AMERICA	§	CASE NO.	7:08-CV-190
v.	§	(Member case)	
2.94 ACRES OF LAND, MORE OR LESS, SITUATED IN STARR COUNTY, STATE OF TEXAS; AND ANABELL G. GARCIA, ET AL.	§	TRACT NO.	RGV-RGC-1045 RGV-RGC-1045E-1 RGV-RGC-1045E-2 RGV-RGC-1045E-3

**UNITED STATES' RESPONSE TO THE COURT'S ORDER
REQUESTING STATUS UPDATE**

COMES NOW the United States of America (“United States”), and files this response to the District Court’s October 17, 2018 Order to inform the Court on the status of the case:

PROCEDURAL BACKGROUND

A. Civil No. 7:08-cv-061 Proceedings

On August 8, 2008, the United States filed Civil No. 7:08-cv-061, condemning a temporary (180-day) right-of-entry easement—identified as Tracts RGV-RGC-1045 and RGV-RGC-1046—for the border fence project. On March 14, 2008, the United States deposited \$100.00 into the Court’s registry as its estimated just compensation for this temporary right-of-entry easement. [Doc. No. 8]. Under the terms of this Court’s order, this easement began on March 25, 2008 and expired on September 6, 2008. [Doc. No. 9, at 7, in Civil No. 7:08-cv-061]. At the time of taking,

the United States believed that Anabell Garcia may have an interest in the land burdened by the temporary right-of-entry easement. [Doc. No. 2-1, at 17, in Civil No. 7:08-cv-061].

The United States filed status reports between 2010 and 2012. On July 23, 2010, the United States filed a status report stating that it had sent a settlement offer to the landowner for her consideration. [Doc. No. 13, in Civil No. 7:08-cv-061]. On October 2012, the United States filed status reports explaining that consolidation of this case (Civil No. 7:08-cv-061) with the subsequent takings case (Civil No. 7:08-cv-190) was appropriate because both cases involved the same landowner. [Doc. No. 19, in Civil No. 7:08-cv-061].

B. Civil No. 7:08-cv-190 Proceedings

On June 28, 2008, the United States filed Civil No. 7:08-cv-190, condemning (i) a fee simple interest in 2.94 acres, more or less, identified as Tract RGV-RGC-1045; (ii) a perpetual right-of-way easement interest in 0.94 acres, more or less, identified as Tract RGV-RGC-1045E-1; (iii) a temporary 24-month right-of-way easement in 0.22 acres, more or less, identified as Tract RGV-RGC-1045E-2; and (d) a temporary 24-month right-of-way easement in 0.24 acres, more or less, identified as Tract RGV-RGC-1045E-3. On July 2, 2008, the United States deposited \$8,000.00 into the Court's registry as its estimated just compensation for Tracts RGV-RGC-1045, RGV-RGC-1045E-1, RGV-RGC-1045E-2, and RGV-RGC-1045E-3.¹ [Doc. No. 4, in Civil No. 7:08-cv-190]. At the time of taking, the United States believed that Anabell and Marcos Garcia owned these tracts. [Doc. No. 2-2, at 23, in Civil No. 7:08-cv-249].

¹ See 40 U.S.C. § 3114(b) ("On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration—(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.").

The United States filed two prior status reports in this case. On October 15, 2012, the United States filed a status report explaining the need to file an Amended Declaration of Taking (“ADT”) to clarify the description and plat of the property taken. [Doc. No. 13, in Civil No. 7:08-cv-190]. On August 29, 2013, the United States filed a status report stating that it could not yet predict when the ADT would be filed due to delays in obtaining the final surveys and title work for the subject property. [Doc. No. 14, in Civil No. 7:08-cv-190].

C. Consolidation and Subsequent Proceedings

On November 10, 2014, the United States filed its unopposed motion to consolidate Civil No. 7:08-cv-061 and Civil No. 7:08-cv-190 because these cases are related border fence actions involving common tracts and common ownership. [Doc. No. 15].² On November 25, 2014, this Court granted the motion to consolidate the two cases under consolidated Civil No. 7:08-cv-061. The United States understands that Lizandro Garcia and Ninfa Alicia Granados Perez are designated attorneys-in-fact for landowner Anabel Garcia in this case.

ANTICIPATED NEXT STEPS

The United States plans to take the following steps to resolve this case:

(1) File an Amended Declaration of Taking (“ADT”) and Amended Complaint in Condemnation (“Amended Complaint”) in order to (a) clarify the description and plat of the land acquired based on finalized surveys and title examination results; (b) clarify that the land taken did not include water distribution and drainage systems; and (c) add as defendants any new parties identified as having an interest.

(2) Resolve all outstanding issues with the landowners, including just compensation, once title ownership has been confirmed via the ADT.

² All references to documents filed after November 10, 2014 refer to Consolidated Civil No. 7:08-cv-061.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that our office will send a copy of this document on December 7 and/or 10, 2018 via regular mail to all parties who have made an appearance and/or for whom the United States has contact information.

s/ Christopher D. Pineda
CHRISTOPHER D. PINEDA
Assistant United States Attorney